

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**UNITED STATES OF AMERICA**

v.

**Case No. 8:03-CR-77-T-30TBM**

**HATEM NAJI FARIZ**  
\_\_\_\_\_ /

**HATEM NAJI FARIZ'S PROPOSED JURY INSTRUCTIONS**

Defendant, Hatem Naji Fariz, by and through undersigned counsel, respectfully submits the following proposed instruction in place of certain of the government's proposed instructions.

Respectfully submitted,

R. FLETCHER PEACOCK  
FEDERAL PUBLIC DEFENDER

      /s/ Kevin T. Beck        
Kevin T. Beck  
Florida Bar No. 0802719  
Assistant Federal Public Defender  
400 North Tampa Street, Suite 2700  
Tampa, Florida 33602  
Telephone: 813-228-2715  
Facsimile: 813-228-2562  
Attorney for Defendant Fariz

**HATEM NAJI FARIZ PROPOSED JURY INSTRUCTION IN PLACE OF  
GOVERNMENT'S INSTRUCTION NO. 23**

**RICO - Conspiracy Offense  
Racketeering: Florida Murder Predicate**

(Note to Judge: Read in all murder and manslaughter cases)

In this case, (*defendant*) is accused of conspiracy to commit murder under Florida Statutes 782.04 and 777.04.

Under Florida Law, Murder in the First Degree includes the lesser crime of Murder in the Second Degree, both of which are unlawful.

A killing that is excusable or was committed by the use of justifiable deadly force is lawful.

If you find (*victim*) was killed by (*defendant*), you will then consider the circumstances surrounding the killing in deciding if the killing was Murder in the First Degree or was Murder in the Second Degree, or whether the killing was excusable or resulted from justifiable use of deadly force.

Florida Statute 782.02 defines justifiable homicide. The killing of a human being is justifiable homicide and lawful if necessarily done while resisting an attempt to murder or commit a felony upon the defendant, or to commit a felony in any dwelling house in which the defendant was at the time of the killing.

Florida Statute 782.03 defines excusable homicide. The killing of a human being is excusable, and therefore lawful, under any one of the following three circumstances:

1. When the killing is committed by accident and misfortune in doing any lawful act by lawful means with usual ordinary caution and without any unlawful intent, or
2. When the killing occurs by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or
3. When the killing is committed by accident and misfortune resulting from a sudden combat, if a dangerous weapon is not used and the killing is not done in a cruel or unusual manner.

A “dangerous weapon” is any weapon that, taking into account the manner in which it is used, is likely to produce death or great bodily harm.

I now instruct you on the circumstances that must be proved before *(defendant)* may be found guilty of First Degree Premeditated Murder or any lesser included crime.<sup>1</sup>

Florida Statute 782.04(1)(a) defines First Degree Premeditated Murder. Before you can find the defendant guilty of First Degree Premeditated Murder, the government must prove the following three elements beyond a reasonable doubt:

1. *(Victim)* is dead.
2. The death was caused by the criminal act of *(defendant)*.
3. There was a premeditated killing of *(victim)*.

An “act” includes a series of related actions arising from and performed pursuant to a single design or purpose.

---

<sup>1</sup>Florida Standard Criminal Jury Instruction 7.1 (2003)

“Killing with premeditation” is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the killing.

If a person has a premeditated design to kill one person and in attempting to kill that person actually kills another person, the killing is premeditated.<sup>2</sup>

Florida Statute 782.04(2) defines Second Degree Murder. Before you can find the defendant guilty of Second Degree Murder, the government must prove the following three elements beyond a reasonable doubt:

1. *(Victim)* is dead.
2. The death was caused by the criminal act of *(defendant)*.
3. There was an unlawful killing of *(victim)* by an act imminently dangerous to another and demonstrating a depraved mind without regard for human life.

An “act” includes a series of related actions arising from and performed pursuant to a single design or purpose.

---

<sup>2</sup>Florida Standard Criminal Jury Instruction 7.2 (2003)

An act is “imminently” dangerous to another and demonstrating a depraved mind”  
if it is an act or series of acts that:

1. A person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and
2. Is done from ill will, hatred, spite or an evil intent, and
3. Is of such a nature that the act itself indicates an indifference to human life.

In order to convict the defendant of Second Degree Murder, it is not necessary for the State to prove the defendant had an intent to cause death.<sup>3</sup>

---

<sup>3</sup>Florida Standard Criminal Jury Instruction 7.4 (2003)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 4th day of October, 2005, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Cherie L. Krigsman, Trial Attorney, U.S. Department of Justice; Alexis L. Collins, Trial Attorney, U.S. Department of Justice; William Moffitt and Linda Moreno, counsel for Sami Amin Al-Arian; Bruce Howie, counsel for Ghassan Ballut; and to Stephen N. Bernstein, counsel for Sameeh Hammoudeh.

/s/ Kevin T. Beck  
Kevin T. Beck  
Assistant Federal Public Defender